

AMENDED IN SENATE MAY 2, 2005
AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 440

Introduced by Senator Speier

February 17, 2005

An act to add Title 1.81.23 (commencing with Section 1798.90.5) to Part 4 of Division 3 of the Civil Code, relating to personal information disclosures.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. Personal information disclosures: businesses.

Existing law prescribes various prohibitions with regard to disclosures of personal information related to, among others, consumer credit reports, credit card transactions, driver's licenses, social security numbers, and direct marketing.

This bill would prohibit a business, as defined, from discriminating against or denying an otherwise qualified consumer a product or service because the consumer has not provided the consent to disclose or share personal information pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared, pursuant to state or federal law. The bill would except from that prohibition a business that cannot provide a product or service without provision of that personal information and certain financial institutions already subject to similar provisions. The bill would provide that no liability is created with regard to the above, and that the measure is not intended to prohibit a business from offering incentives or discounts to elicit a specific response pertaining to the disclosure or sharing of personal information.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Title 1.81.23 (commencing with Section 1798.90.5) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.23. PERSONAL INFORMATION
DISCLOSURES TO BUSINESSES

1798.90.5. (a) A business shall not discriminate against or deny an otherwise qualified consumer a product or service because the consumer has not provided the business the consent to disclose or share personal information pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared, pursuant to state or federal law.

(b) Notwithstanding any other provision of law, nothing in this section shall prohibit a business from denying a consumer a product or service if the business could not provide the product or service to the consumer without disclosure of the consumer's personal information, and the consumer has failed to provide consent to that disclosure or has directed that personal information pertaining to him or her not be disclosed or shared, pursuant to state or federal law.

(c) A business shall not be liable for failing to offer products or services to a consumer solely because that consumer, pursuant to state or federal law, has failed to provide the business the consent to disclose or share personal information pertaining to him or her or has directed that personal information not be disclosed or shared, and the business could not offer the product or service without the disclosure of the consumer's personal information.

(d) Nothing in this section is intended to prohibit a business from offering incentives or discounts to elicit a specific response to a choice pertaining to the disclosure or sharing of personal information granted in state or federal law.

(e) The requirements of this section shall not apply to ~~where~~ a business ~~that~~ is subject to, and in compliance with, paragraph (1)

1 of subdivision (a) and paragraph (4) of subdivision (b) of Section
2 4053 of the Financial Code.

3 (f) For purposes of this section:

4 (1) “Business” means a proprietorship, partnership,
5 corporation, or any other form of commercial enterprise, doing
6 business in California.

7 (2) “Personal information” has the same meaning as described
8 in Section 1798.80.

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